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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

THE GERMAN ROMAN CATHOLIC CONGREGATION OF ST. MICHAEL'S CHURCH, SOUTH SIDE, PITTSBURGH, ALLEGENY COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, *et al.*,

Petitioners,

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

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PETITION FOR WRIT OF CERTIORARI

DAVID K. MCMULLIN
Counsel of Record
309 Smithfield Street
Suite 5200
Pittsburgh, PA 15222-2220
(412) 471-3011
Attorney for Petitioners

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

83 pp

QUESTIONS PRESENTED FOR REVIEW

1. Where a state statute, incorporating therein the Canon Law of a church which is legislated by its temporal head who is also a foreign sovereign absoulte monarch, in its application deprives persons of property and further denies them legal standing to defend against such taking, is the refusal of the state courts to consider questions of the unconstitutionality of said Statute establishing a dangerous precedent allowing state governments to deprive persons of rights and property secured by the United States Constitution, especially so were the result reached by the state's actions is contrary to a ruling of this Court?

2. Is said statute, the Act of June 20, 1935, P.L. 351 § 1, 10 P.S. § 81, unconstitutional because it violates the following provisions of the United States Constitution:

(a) Article I, Section 10 (1): The Act is unconstitutional as it impairs contracts set forth in deeds of trust;

(b) Article I, Section 10 (3): The Act gives to a foreign sovereign without permission of Congress the power to determine and change property law in Pennsylvania;

(c) Article IV, Section 4: The Act surrenders law making authority in Pennsylvania to a foreign absolute monarch;

(d) Amendment 1: The Act by incorporating Canon Law into the civil law necessariiy co-mingles church and state functions resulting in the establishment of a religion;

(e) Amendments 5 & 14: The Act deprives persons of property rights without any requirement for compensation being paid, without a forum in which to be heard and without due process of law?

LIST OF PARTIES

Petitioners

(1) The German Roman Catholic Congregation of Saint Michael's Church, (South Side, Pittsburgh, Pennsylvania), an unincorporated association, by and through Dennis Bielewicz, Dorothy Senn and Fred Berner, Trustees Ad Litem,

(2) The Roman Catholic Congregation of Immaculate Conception Church, (Càrnegie, Pennsylvania), an unincorporated association, by and through James Longo, Michael Mazur and Merle Utchel, Trustees Ad Litem,

Respondent

(1) The Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. ———

THE GERMAN ROMAN CATHOLIC CONGREGATION OF ST. MICHAEL'S CHURCH, SOUTH SIDE, PITTSBURGH, ALLEGENY COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, *et al.*,

Petitioners,

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

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PETITION FOR WRIT OF CERTIORARI

OPINIONS OF LOWER COURTS

1. Opinion, Court of Common Pleas of Allegheny, County, Pennsylvania. Unpublished December 20, 1995. Appendix p. 6a.

2. Opinion, Superior Court of Pennsylvania, Pittsburgh District, 447 PA Super. 208. October 24, 1996. Appendix p. 2a.

3. Order, Supreme Court of Pennsylvania, Western District. Unpublished, April 16, 1997. Appendix p. 1a.

STATEMENT OF JURISDICTION

Petitioners are seeking review of a final order by the Supreme Court of the Commonwealth of Pennsylvania, the highest court of the State where the decision was rendered, on April 16, 1997, which refused to allow Petitioners leave to appeal for discretionary review of an Order of October 24, 1996 from the Superior Court of the Commonwealth of Pennsylvania. Petitioners have not requested any extension of time within which to file the instant Petition For Writ of Certiorari. The statutory provision believed to confer jurisdiction on this Court to review the aforementioned Order is 29 U.S.C. § 1257(a). This Petition is timely filed under Supreme Court Rule 13.1. and 28 U.S.C. § 2102(C) & (F).

VERBATIM REPRODUCTION OF CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. STATUTE

Commonwealth of Pennsylvania, Act of June 20, 1935, P.L. 351 § 1, 10 P.S. § 81. Whenever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised, or conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture, or for use by said church, congregation, or religious society, for a school, educational institution, convent, rectory, parsonage, hall, auditorium, or the maintenance of any of these, the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling

power according to the rules, regulations, usages, or corporate requirements of such church, congregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated; And provided, All charters heretofore granted for any church, congregation, or religious society, without incorporating therein the requirement that the property, real and personal, of such corporation, shall be taken, held and enure subject to the control and disposition as herein provided, but which are in other respects good and valid, and shall be in all respects as good and valid, for all purposes, as if the said requirement had been inserted therein when the said charters were originally granted; and the title to all property, real and personal, heretofore bequeathed, devised, or conveyed to such church, congregation, or religious society, or which may have heretofore been granted or conveyed by such corporation, shall be firm and stable forever, with like effect as though the said requirements had been contained in the charter of such corporation when the same was originally granted: Provided, That all property, real and personal, held by such existing corporation, shall enure, and be taken and held, subject to the control and disposition as herein provided, with like effect as though such provision had been inserted in the charter of such corporation when originally granted, any other or different provision therein notwithstanding.

2. CONSTITUTION PROVISIONS

(i) Article I, Section 10. Cl. 1. "*Powers denied states —Treaties—Money—Ex post facto laws—Obligation of contracts.* No State shall enter into any treaty, alliance,

or confederation; grant letters of marque and reprisal; coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

(ii) Article I, Section 10, Cl. 3. "*Tonnage—State Compacts—War.* No State shall without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

(iii) Article IV, Section 4. "*Form of State Governments—Protection.* The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

(iv) United States Constitution. Amendment 1. "*Religious and political freedom.*" Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

(v) United States Constitution. Amendment 5. "*Criminal actions—Provisions concerning—Due process of law and just compensation clauses.* No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or prop-

erty, without due process of law; not shall private property be taken for public use, without just compensation.

(vi) United States Constitution. Amendment 14. Section 1. "*Citizens of the United States.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This matter involves a Civil Action In Equity brought by two Roman Catholic Congregations, unincorporated associations, as are more specifically identified in the caption, by and through their respective elected Trustees Ad Litem. In the Complaint, the Congregations sought injunctive and other equitable relief against the Respondent who had entered upon a course of conduct that deprived the Congregations of the beneficial enjoyment of real properties that had been dedicated to their use and which had been held in trust for them by the Respondent and his predecessor Trustees. The trusts had been created in said real property by recorded deeds of conveyance. In said deeds, the designated beneficiaries of the trusts were the Congregations (the people) and not the thereafter created parishes (administrative subdivisions of the diocese). Respondent had closed the churches and other buildings situated on said properties, locked the Congregations out of same and has been attempting to sell said real properties which, at the time of his wrongfully converting same from the beneficiaries of the trusts, he declared in writing as now being the property of certain new administrative units of the Diocese of Pittsburgh. The Trustee claimed authority to so violate the trusts by virtue of the aforesaid Act of 1935 without any compensation

being paid or offered to the Congregations and without the undertaking of any legal proceeding in any forum.

The Congregations raised all of the arguments about Constitutional defects in the Complaint, their Response to Preliminary Objections, their Motion for Partial Summary Judgment and Response to their Trustee's Motion for Summary Judgment, and in their Briefs in the court of first instance, namely the Common Pleas of Allegheny County, Pennsylvania. These Constitutional defects were further raised in the record and Brief filed by the Congregations in the Superior Court of Pennsylvania upon Appeal. Said defects were further raised in the record and Petition for Allowance of Appeal with the Supreme Court of Pennsylvania.

The Constitutional issues were never addressed or decided at any level as the Court of Common Pleas of Allegheny County and the Superior Court of Pennsylvania both held that the Congregations lacked legal standing to bring the litigation as they had lost such standing pursuant to the provisions of the Act of 1935. The Supreme Court of Pennsylvania, by refusing to accept the Appeal, allowed the Order of the Superior Court to become law in Pennsylvania.

The Congregations are not contesting the right of their Trustee in his capacity as Bishop of Pittsburgh to terminate the legal existence of parishes, to govern his diocese or to challenge his authority in ecclesiastical or spiritual matters. They are seeking only to preserve the trusts, to have a judicial declaration determining the ownership of the trust assets and protecting their property rights therein, all purely secular and civil matters.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

I. THE STATE COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH A PRIOR RELEVANT DECISION OF THIS COURT.

In *Jones v. Wolf*, 443 U.S. 595 (1979), this Court held that secular courts may use general principals of law to resolve church property disputes that do not involve religious questions. It was therein set forth that a Court may resolve . . . church property disputes by considering the language of deeds to property, state statutes and the constitution of the central denomination, interpreting them pursuant to general legal principals.

The Pennsylvania decisions involved herein, in effect, hold all such property disputes to be purely ecclesiastical matters and not subject to review by civil courts. The decision of the Pennsylvania Appellate Courts is therefore contrary to the decision of this Court in *Jones v. Wolf*, supra.

II. THE STATE COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The Commonwealth of Pennsylvania has enacted and judicially interpreted an Act which in its application to the Petitioners has violated rights secured to them by the United States Constitution. In effect, the legislature and courts of Pennsylvania have created a federal question as to whether they are empowered to deprive persons of their rights in property and also their rights to come into Court to defend against such takings. Prior to the enactment of the statute, there was no argument that congregations such as the Petitioners herein had established property rights along with a capacity and standing to protect same in civil courts. In other words, but for the

Act of 1935, the Petitioners would be found to have legal standing to come into civil court in order to protect their rights in the properties in question. The Act, as interpreted by the Courts, purportedly took away their legal standing to do so. When the Petitioners attacked that statute as being unconstitutional on its face and also in its application, the state courts would not entertain argument on those points holding that Petitioners had no standing to attack the constitutionality of the statute as the statute itself had taken away their standing. The Act created the perfect "Bootstrap Argument" that the Petitioners could not defeat.

By virtue of its "Bootstrap", the State has avoided the federal questions concerning the Constitutional defects of its statute and judicial holdings. The Constitutional defects pose important federal questions that must be decided by this Court. These are as follows:

(a) Article I, Section 10, Clause 1 prohibits any state from enacting a law impairing the obligation of contracts. The obligation of contracts has received protection from the United States Supreme Court in a line of cases stretching back to *Fletcher v. Peck,* 6 Cranch 87, 136 (1810). Trusts, such as the ones that were established for the Petitioners, are contractual in nature and deserving of constitutional protection. *Coolidge v. Long,* 282 U.S. 582, 75 L. Ed. 562, 51 Sp. Ct 306 (1931). The Congregations were the beneficiaries of the trusts created and as such possessed vested, beneficial interests in the trust assets without question prior to the enactment of the Act of 1935. *Kranczunas v. Hoban*, 221 Pa. 231, 70 A. 740 (1908). Petitioners' trusts provisions were observed by the Respondent Trustee until 1992 when he undertook actions to deprive Petitioners of the beneficial enjoyment of the trust assets, locked them out of the churches and other buildings and further acted to wrongfully convert the trust assets to the use and benefit of

third parties. Petitioners' efforts to force Respondent to observe his duties as Trustee led to the present case.

(b) The Act gives to a foreign sovereign, without the permission of Congress, the power to determine and change property law and legal standing in Pennsylvania. In addition, the Act surrenders the State's law making authority to an absolute monarch, the ruler of Vatican City. As such, the Act violates Article I, Section 10(3) and Article IV Section 4 of the United States Constitution. States are not permitted to do what Pennsylvania had done and by ceding its legislative and judicial authority to the Vatican the State has effectively denied fundamental due process guaranteed to the Petitioners by Amendments 1, 5 and 14.

(c) The State, by its incorporation of the law of Vatican City and the Roman Catholic Church into the civil law of Pennsylvania has impermissibly co-mingled church and state resulting in a violation of the establishment clause of Amendment 1. There is no separation of church and state when the Pope decides what the property law of the state is and in so doing, through the actions of a bishop and trustee, deprives owners of their property rights. The Act of 1935 has been applied unconstitutionally as a violation of Amendment 1 as it works an establishment of a religion to take the property owned by organized groups of people, American citizens, without compensation and to turn such property over to the Roman Catholic Church as an institution. Locking the members of these Catholic Congregations out of the church buildings owned by them is also a violation of their rights to associate together in order to exercise their freedom of religion.

(d) The Act of 1935, as applied by the Pennsylvania courts, has taken property away from these Congregations without due process of law, in violation of Amendment 5 and Amendment 14 of the United States Constitution, as

there are no requirements for notice, hearing or compensation.

CONCLUSION

For all of the above reasons, this Court should grant the Petition of the Congregations in this matter and review the erroneous decision of the Supreme Court of Pennsylvania.

Respectfully submitted,

DAVID K. MCMULLIN
Counsel of Record
309 Smithfield Street
Suite 5200
Pittsburgh, PA 15222-2220
(412) 471-3011
Attorney for Petitioners

Dated: July 14, 1997

APPENDIX

APPENDIX

IN THE SUPREME COURT OF PENNSYLVANIA

No. 0730 W.D. Allocatur Docket 1996

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH (South Side, Pittsburgh, Pennsylvania), an unincorporated association, by and through DENNIS BIELEWICZ, DOROTHY SENN and FRED BERNER, trustees ad litem, and the ROMAN CATHOLIC CONGREGATION OF IMMACULATE CONCEPTION CHURCH, (Carnegie, Pennsylvania), by and through JAMES LONGO, MICHAEL MAZUR, and MERLE UTCHEL, trustees ad litem,

Petitioners

v.

THE MOST REVEREND DONALD W. WUERL,
Bishop of the Roman Catholic Diocese of Pittsburgh,
Respondent

Petition for Allowance of Appeal from Superior Court

ORDER

PER CURIAM:

AND NOW, this 16th day of April, 1997, the Petition for Allowance of Appeal is hereby DENIED.

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 00142 Pittsburgh 1996

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH (SOUTH SIDE, PITTSBURGH, PENNSYLVANIA), AN UNINCORPORATED ASSOCIATION, BY AND THROUGH DENNIS BIELEWICZ, DOROTHY SENN AND FRED BERNER, TRUSTEES AD LITEM, AND THE ROMAN CATHOLIC CONGREGATION OF IMMACULATE CONCEPTION CHURCH (CARNEGIE, PENNSYLVANIA) BY AND THROUGH JAMES LONGO, MICHAEL MAZUR AND MERLE UTCHEL, TRUSTEES AD LITEM,

Appellants

v.

THE MOST REVEREND DONALD W. WUERLY, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Appellee

Appeal from the ORDER ENTERED December 20, 1995, in the Court of Common Pleas of ALLEGHENY County, CIVIL, No. GD 92-19078

BEFORE: KELLY, JOHNSON, and OLSZEWSKI, JJ.

MEMORANDUM

Filed: October 24, 1996

Appellants, the German Roman Catholic Congregation of St. Michael's Church, by and through its trustees *ad litem*, and the Roman Catholic Congregation of Immacu-

late Conception, by and through its trustees *ad litem,* initiated the instant action by filing a complaint in equity against appellee, the Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh. The complaint asserted and sought to enforce appellants' rights to real and personal property formerly owned by the now-suppressed parishes of St. Michael's and Immaculate Conception.

On December 20, 1995, the Honorable Eugene B. Strassburger III granted summary judgment in favor of appellee. The court found that appellants lacked standing to maintain this action in the wake of the suppression of the parishes of St. Michael's and Immaculate Conception. From this order, appellants filed the instant appeal.

In asserting that the trial court erred in granting summary judgment, appellants claim that they have standing to maintain this action. Even though appellee suppressed the parishes of St. Michael's and Immaculate Conception, appellants argue that a congregation exists as a separate entity and that the congregation can still maintain this action. Appellants acknowledge that the Pennsylvania Supreme Court denied standing to suppressed parishes in two early cases, *Canovaro v. Brothers of the Order of Hermits of St. Augustine,* 326 Pa. 76, 191 A. 140 (1937), and *Post v. Dougherty,* 326 Pa. 97, 191 A. 151 (1937). Nevertheless, appellants argue that these decisions are not controlling because: 1) appellants herein are proceeding as a congregation and not as a parish; 2) *Canovaro* and *Post* relied upon an old version of the Code of Canon Law; and 3) appellee herein violated numerous provissions of the current Code of Canon Law in suppressing the parishes. Pointing to a recent decision of the Apostolic Signatura, the highes tribunal of the Roman Catholic Church, appellants claim that recent decisions compel the conclusion that a congregation has proper standing.

Unfortunately for appellants, identical arguments were recently adressed and rejected by this Court in *Croation*

Roman Catholic Congregation of the Holy Trinity Church v. Wuerl, —— Pa.Super ——, ——, 668 A.2d 1151, 1152-53 (1995). In *Croatian Roman Catholic*, this Court first cited *Canovaro* and *Post* for the proposition that suppressed parishes have no standing. *Id.* We then held that no relevant distinction existed between a congregation and a parish for purposes of determining standing. *Id.* The attempts to avoid application of *Canovaro* and *Post,* by reference to the new Code of Canon Law and to possible violations of the law during the suppression process, were promptly rejected by this Court. *Id.* We found nothing to suggest that a new Code of Canon Law would compel a different conclusion on the isue of standing. As for the suppression process, we found such process to be a clearly ecclesiastical matter in which the courts should not interfere. *Id.* Finally, with respect to the decision of the Apostolic Signatura, we found that civil courts are not bound by decisions of a church tribunal. *Id.*

Since the arguments presented by appellants have already been examined and rejected by a prior Superior Court panel, appellants' claim of standing must fail. Accordingly, we affirm the trial court's order, dated December 20, 1995, granting summary judgment in favor of appellee.[1]

Order affirmed.

---

[1] In light of our conclusion that appellants lacked standing to maintain this action, we need not address the other three issues, addressing the merits of the controversy, raised in appellants' brief. *See In re Barnes Foundation,* 443 Pa.Super. 369, ——, 661 A.2d 889, 894, *appeal denied,* —— Pa. ——, 668 A.2d 1119, and *appeal denied,* —— Pa. ——, 674 A.2d 1064 (1995).

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

No. 142 Pittsburgh, 1996

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH (SOUTH SIDE, PITTSBURGH, PENNSYLVANIA), *et al.*,
Appellants

v.

THE MOST REVEREND DONALD W. WUERLY, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

---

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of ALLEGHENY County be, and the same is hereby AFFIRMED.

BY THE COURT:

/s/ Eleanor R. Valecko
Deputy Prothonotary

DATED: October 24, 1996

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. GD92-19078

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH, *et al.*,
Plaintiffs

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,
Defendant

OPINION

As noted in the order appealed from, this case is on all fours with *Croatian Roman Catholic Congregation* v. *Wuerl*, Nos. 122, 254 and 733 Pittsburgh 1995 (Pa. Super. 12/18/95). At the oral argument in the instant case, counsel for appellants conceded that *Croatian* controlled this case, and that a loss by the plaintiffs there would compel a loss by the plaintiffs here. It would be gilding the lily for me to try to improve on the reasoning of the *Croatian* court, and I thus adopt that opinion as my opinion here.

STRASSBURGER, J.

January 26, 1996

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. GD92-19078

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH, *et al.*,
Plaintiffs

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,
Defendant

MEMORANDUM ORDER

AND NOW, therefore, this 20th day of December, 1995, after argument, it is hereby ORDERED that Plaintiffs' motion for partial summary judgment is denied, and the motion of Defendant for summary judgment is granted.

The instant case is controlled by *Croatian Roman Catholic Congregation v. Wuerl*, Nos. 122, 254 and 733 Pittsburgh 1955 (Pa. Super.), filed December 18, 1995. The Court there analyzed all of the issues presented herein, and while recognizing as I do the obvious devotion of the plaintiff parishioners, found that they lacked standing.

BY THE COURT:

/s/ Gene Strassburger
J.

Supreme Court, U.S.
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(2)

No. 97-83

In The

Supreme Court of the United States

October Term, 1997

THE GERMAN ROMAN CATHOLIC CONGREGATION OF ST. MICHAEL'S CHURCH, SOUTH SIDE, PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, *et al.*

Petitioners,

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

WILLIAM A. STEIDLE, JR.
Diocese of Pittsburgh
111 Boulevard of the Allies
Pittsburgh, PA 15222
(412) 456-3126

*PHILIP J. MURREN
MAURA K. QUINLAN
BALL, SKELLY, MURREN & CONNELL
511 North Second Street
P.O. Box 1108
Harrisburg, PA 17108
(717) 232-8731

Counsel for Respondent
**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

22pp

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Do some former members of the parochial congregations of two Roman Catholic Churches, which have ceased to exist according to the laws of the Roman Catholic Church, have standing in civil court to assert property rights which they claim to have had in their capacity as members of those former parochial congregations?

2. Would a civil court lack jurisdiction to decide the church property issues involved in this action on the basis of "neutral principles of law" because those issues are inextricably intertwined with purely ecclesiastical matters?

3. Could the relief requested by Plaintiffs be granted without violating the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution?

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U. S. Constitution, Article IV, § 4 12

Act of June 20, 1935, P.L. 353; 10 P.S. § 81 ..... *passim*

COUNTER-STATEMENT OF THE CASE

This case involves a church property dispute brought by certain individuals who claim to represent the Roman Catholic Congregations of Roman Catholic Churches within the Diocese of Pittsburgh against the Most Reverend Donald W. Wuerl, the Roman Catholic Bishop of the Diocese of Pittsburgh.

Both of the Churches involved were established according to the laws of the Roman Catholic Church. The Bishop of Pittsburgh gave each Church its name, assigned a pastor to it and defined the membership of the Roman Catholic Congregation of the Church.

These disputes arose out of a lengthy diocesan-wide parish reorganization and revitalization process which was begun in 1989. That process was undertaken to determine how best to reorganize the parishes within the Diocese so as to more equitably distribute the resources (financial, material and human) of the Church and to better serve the spiritual needs of all Catholics in the Diocese of Pittsburgh. *See*, Duch Affidavit, filed in support of Defendant's Cross-Motion for Summary Judgment and incorporated in the Reproduced Record filed with the Superior Court at R.1522a-1561a (hereinafter "Duch Affidavit").

As a result of this diocesan-wide reorganization project, Bishop Wuerl issued Decrees of Suppression for several parishes, including St. Michael's and Immaculate Conception. Those decrees provided that all members of the parochial congregations of the suppressed parishes would become members of newly established successor parishes. The Decrees also provided that all assets and

liabilities of those suppressed parishes were to be assumed by the successor parishes in accord with the law of the Church. All official Church records also were conveyed to the successor parishes to be faithfully preserved according to Canon Law. *See*, DiNardo Affidavit, filed in support of Defendant's Cross-Motion for Summary Judgment and incorporated in the Reproduced Record filed with the Superior Court at R.1402a-1520a (hereinafter "DiNardo Affidavit"), at R.1486a-1487a.

Displeased with the Bishop's decisions to suppress these parishes and reassign them to successor parishes, Petitioners filed suit in civil court against Bishop Wuerl. They claimed to be members of "The German Roman Catholic Congregation of Saint Michael's Church," and "The Roman Catholic Congregation of Immaculate Conception Church," and claimed to have standing to bring these actions on behalf of those congregations.

The Petitioners alleged in each case that they had acquired ownership of certain real properties described in deeds attached to the Complaints. None of these deeds, however, conveyed the real properties in question to Roman Catholic Congregations (the entities on whose behalf Petitioners claim to act). Rather, those deeds conveyed properties to the Roman Catholic Bishop of Pittsburgh and his successors as Trustees.

The Petitioners also claim that certain personal property (*e.g.*, statues, religious articles) belonged to them in trust. However, the record contains no evidence of any trust instruments relating to any of the personal property at issue here.

The Petitioners alleged that, in suppressing the parishes, the Bishop violated various provisions of the Code of Canon Law – the governing ecclesiastical law of the Roman Catholic Church. They also alleged that in failing to comply with Canon Law, the Bishop violated a Pennsylvania statute, the Act of June 30, 1935, P.L. 353, 10 P.S. § 81 (hereinafter "the Act of 1935").

Having claimed numerous violations of church law and various violations of state law stemming from these alleged violations of church law, the Petitioners sought injunctive relief and requested that the trial court issue an order: 1) rescinding the Bishop's ecclesiastical decisions and decrees which suppressed the parishes and closed the churches; 2) reopening the churches; 3) enjoining the Bishop from disposing of any of the property in question, including transferring those properties to the respective named successor parishes in accordance with the laws of the Roman Catholic Church; and 4) requiring the Bishop to transfer all personal properties, monies, books and records of the suppressed parishes to the Petitioners. If the Bishop should fail to comply with such order, the Petitioners also requested the civil courts to appoint a substitute trustee who would succeed to the "fiduciary duties" of Bishop Wuerl.

In addition to this relief, the Petitioners requested the court to compel the Bishop to provide a complete accounting of all the disputed properties. Alternatively, they requested the court to declare that the Act of 1935 violated various provisions of the United States Constitution, and to declare that Petitioners possessed a legal estate, a property right and a beneficial interest in the real

and personal properties which are the subject of this dispute.

Bishop Wuerl responded by claiming: 1) that Petitioners lack standing to bring these actions because the Roman Catholic Congregations to which they claimed to belong and which they claimed to represent had ceased to exist upon their suppression and Petitioners were now members of other successor parishes; 2) civil courts lack jurisdiction to resolve the purely ecclesiastical issues presented for review; and 3) none of the relief sought could be granted without violating the Constitutions of the United States and Pennsylvania.

Relying on a long and unbroken line of Pennsylvania Supreme Court precedent, the trial court and Superior Court dismissed this action based on Petitioners' lack of standing and based also on the fact that civil courts lack jurisdiction to review ecclesiastical decisions concerning the suppression of parishes and the effect thereof on church membership. Petitioners appealed that adverse judgment to the Pennsylvania Supreme Court and that Court denied review.

SUMMARY OF ARGUMENT

Pennsylvania law ("the Act of 1935") provides that church properties are to be controlled and disposed of according to church law. Petitioners claim to be members of the parochial congregations of two Roman Catholic churches and to have standing to assert property rights on behalf of those parochial congregations as against the

Roman Catholic Bishop of Pittsburgh. The Roman Catholic Church has declared that the entities to which Petitioners claim to belong no longer exist, due to their valid suppression by ecclesiastical decrees, and that Petitioners are now members of new successor parishes which were established by valid ecclesiastical decrees.

In short, Petitioners are not members of the parochial congregations to which they claim to belong and, accordingly, they lack standing to bring this action on behalf of those congregations.

The state courts so held, and the central issue presented for review in this Court is whether Petitioners lack standing to assert any property rights on behalf of the parochial congregations to which they previously belonged. Every claim made by Petitioners in an attempt to support their standing to bring this action is inextricably intertwined with and draws into question the practices, doctrines and laws of the Roman Catholic Church and would require civil courts to make judgments regarding those purely ecclesiastical issues.

The decision of the state court is in complete conformity with prior decisions of this Court and, indeed, is mandated by those decisions. Petitioners' lack of standing to claim any property rights in the church properties in question is not limited to the state law questions which already have been resolved. They also lack standing to raise each of the federal constitutional issues which they have presented for review.

Moreover, even if Petitioners had standing to raise the federal questions presented for review, there is no

merit to the argument put forward by Petitioners regarding alleged violations of various provisions of the United States Constitution.

REASONS FOR DENYING THE PETITION

The Petition for Writ of Certiorari filed in this matter is virtually identical to that which was filed with this Court in *Croatian Roman Catholic Congregation of the Holy Trinity Church, et al. v. Wuerl*, No. 96-937. On February 18, 1997, this Court denied certiorari in that matter. ___U.S. ___, 136 L.Ed. 2d 842, 117 S.Ct. 956 (1997). The reasons for denying review set forth in Bishop Wuerl's Brief in Opposition to that prior petition are the same as those presented to this Court in opposition to this petition.

Petitioners argue that this Court should grant review for two reasons. First, they argue that the decisions of the Pennsylvania court to dismiss their claims based on lack of standing and lack of jurisdiction to decide ecclesiastical issues is in conflict with this Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979). Petition at 7. Next they argue that Pennsylvania's church property law (the Act of 1935) is unconstitutional under various provisions of the United States Constitution and that these are important federal issues, which should be addressed by this Court. *Id.* at 7-10. For the reasons set forth in greater detail below, this Court should deny review.

I. PETITIONERS LACK STANDING TO BRING THIS ACTION, AND THE DECISION OF THE PENNSYLVANIA COURT IS IN COMPLETE CONFORMITY WITH THE DECISIONS OF THIS COURT.

The Pennsylvania Supreme Court long ago pointed out that "any rights which the laity may have in church property can arise only out of membership in the congregation." *Post v. Dougherty*, 326 Pa. 97, 101, 191 A. 151, 153 (1937). That Court also recognized that church membership is purely an ecclesiastical matter for determination by church authorities; not by civil courts. *Id.* The Court noted that "[u]nder the Roman Catholic canons the suppression of a parish renders it extinct." *Id.* at 99, 191 A. at 152. Accordingly the Court continued:

> The effect of the suppression of the parish was to cause the lay members to lose their membership therein, and become members of another parish. Having lost their membership in the parish, they have no standing to maintain a bill in equity to enforce any property rights which they may have had in their former capacity as members of the parish.

Id. at 102, 191 A. at 153. *See also, Canovaro v. Brothers of Order of Hermits of St. Augustine*, 326 Pa. 76, 84-85, 191 A. 140 (1937) ("Division, dismemberment, or suppression of parishes, and the effect thereof on membership are purely ecclesiastical matters, dependent upon the church law as administered by the appropriate authorities and tribunals."); *St. Peter's Roman Catholic Parish v. Urban Redevelopment Authority of Pittsburgh, et al.*, 394 Pa. 194, 198, 146 A.2d 724, 726 (1958), *cert. denied*, 359 U.S. 435 (1959) ("The dispositive rule is that plaintiff, as a parish

or congregation, has no standing to sue. The Bishop owns the property, in trust for the parish, and alone may dispose of it in accordance of the Canons of the Roman Catholic Church.")

The Superior Court, in rendering its decision in this case, relied upon the above Pennsylvania Supreme Court precedent and the recent decision issued by a different panel of the Superior Court which held that Petitioners lacked standing to bring such actions. *See, Croatian Roman Catholic Congregation v. Wuerl*, 447 Pa. Super. 208, 668 A.2d 1151 (1995), *appeal denied*, ___ Pa. ___, 683 A.2d 884 (1996), *cert. denied*, ___U.S. ___, 136 L.Ed. 2d 842 (1997).

The above state court decisions are in complete conformity with those of this Court which prohibit civil courts from making judgments regarding purely ecclesiastical matters. *See e.g., Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Milivojevich, et al.*, 426 U.S. 696 (1976); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); and *Watson v. Jones*, 13 Wall. 679 (1871).

Indeed, those state court decisions were mandated by the above decisions of this Court which protect the right of religious bodies to self-governance and prohibit civil authorities from intruding upon that right. Among the matters described by the *Watson* Court as "strictly and purely ecclesiastical" and within the purview of ecclesiastical tribunals, are matters which concern "ecclesiastical government." *Id.* In matters such as these, the "rule of deference" must apply.

Ecclesiastical determinations regarding church membership lie at the core of religious self-governance. The

right of religious societies to make such determinations without governmental interference is protected by the Free Exercise Clause of the First Amendment, and by non-entanglement principles contained in the Establishment Clause of the First Amendment.

Petitioners suggest that this Court's decision in *Jones v. Wolf* requires that the "rule of deference" be disregarded and "neutral principles" be applied when a case involves church property. That case, however, stands for no such proposition. *Jones* holds only that, in church property disputes, a "severely circumscribed" exception to civil court non-intervention may apply where the issues are capable of being determined without resolution of underlying ecclesiastical questions. 443 U.S. at 602-603. Where ownership of church property is to be determined "according to the 'laws and regulations' of the [church], then the First Amendment requires that the [state] courts give deference to the [church's] determination." *Id.* at 609.

The issues presented for review in this case are anything but devoid of ecclesiastical questions. The very standing of Petitioners to bring this action turns upon the meaning and effect of the Canon Law of the Roman Catholic Church.

Petitioners have claimed that they are members of the parochial congregations which they claim to represent and that they have property rights based on such membership. They base these claims on assertions that the Bishop's ecclesiastical decrees of suppression were invalid because he violated numerous provisions of

Canon Law in issuing those decrees.[1] Thus, Petitioners claim that the parochial congregations to which they previously belonged continue to exist and that they continue to be members of those congregations.

Bishop Wuerl has asserted that the parishes were validly suppressed and that, under the laws of the Roman Catholic Church, Petitioners are not members of the parochial congregations which they claim to represent. Moreover, the Bishop has also asserted that, under Canon Law, even if Petitioners continued to be members of those parochial congregations, they still would be prohibited from bringing these actions and therefore lack standing.[2]

If Petitioners are not members of those congregations, they can claim no property rights whatsoever. The same is true if, as Bishop Wuerl has asserted, members of Roman Catholic churches do not acquire any property rights by virtue of their membership.[3]

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[1] Petitioners' ecclesiastical appeals questioning the validity of Bishop Wuerl's decrees were unsuccessful.

[2] Even if Petitioners continued to be members of those congregations, the laws of the Roman Catholic Church prohibit individual members of a congregation from suing on behalf of the parochial congregation. Only the Pastor of the parish is entitled to file suit on behalf of a parish congregation. *See*, Defendant's Cross-Motion for Summary Judgment, incorporated in the Reproduced Record filed with the Superior Court at ¶¶ 44-47, R.1384a-1385a. Moreover, under Canon Law, even a pastor is prohibited from initiating an action in civil courts without the consent of the Bishop. *Id.*

[3] According to the Canon Law of the Roman Catholic Church, only juridic persons may own church property, *see*, DiNardo Affidavit at ¶¶ 12-13, R.1406a-1407a, and Petitioners have conceded that they are not juridic persons. Thus, they

Under this Court's prior precedent, civil courts must defer to ecclesiastical tribunals regarding the meaning and effect of ecclesiastical laws. The Church has determined that, pursuant to its laws, Petitioners are not members of the congregations they claim to represent and that they would not have any property rights even if they were. The civil courts are constitutionally bound to defer to these ecclesiastical determinations. Accordingly, Petitioners have no protectable property rights and lack sufficient standing to satisfy Article III which requires the existence of a case or controversy for the exercise of this Court's jurisdiction.

II. THE STATE COURT HAS NOT RENDERED ANY DECISION WITH RESPECT TO THE FEDERAL QUESTIONS RAISED BY PETITIONERS, AND THE PENNSYLVANIA CHURCH PROPERTY LAW IS CONSTITUTIONAL.

A. The State Court Did Not Address Any Federal Questions Raised by Petitioners.

Petitioners are mistaken in claiming that the state court decided important federal questions which should be reviewed by this Court. Petition at 7. To the contrary, the state court never reached any of the federal questions raised by Petitioners. Rather, it dismissed the actions

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would not have standing to assert rights to the properties in question even if they continued to be members of these churches.

based on Petitioners' lack of standing. Having determined that Petitioners were not members of the congregations to which they claimed to belong, the state court simply refused to proceed further.

B. Pennsylvania's Church Property Law is Constitutional.

Petitioners argue that this Court should grant review for the following reasons. First, they assert that prior to enactment of the Act of 1935, they had "established property rights" and would have had standing to bring this action. Petition at 7. They next claim that their lack of standing is due to the operation of the Act of 1935, and they suggest that the Act must be held unconstitutional because it has deprived them of their standing in violation of their due process rights to defend their property interests. Petition at 7-10. Finally, they claim that the Act is unconstitutional because it: 1) operates to impair the obligations of contracts in violation of Article I, § 10, cl. 1 of the Constitution (Petition at 8-9); 2) gives a foreign sovereign (Vatican City) the power to change Pennsylvania law, in violation of Article I, § 10, cl. 3 and Article IV, § 4 of the Constitution (Petition at 9); and 3) violates the Establishment Clause of the First Amendment by incorporating the law of the Roman Catholic Church into the civil property law (Petition at 9).

As set forth below, each of these arguments is premised upon erroneous assumptions and lacks merit. Thus, they are not worthy of review by this Court.

1. Contrary to Petitioners' assertions, their lack of standing is not due to the operation of the Act of 1935.

Rather it is due to the operation of the ecclesiastical decrees of suppression issued by Bishop Wuerl which deprived them of membership in the congregations which they claim to represent.

St. Casimir's Polish Roman Catholic Church's Case, 273 Pa. 494, 117 A. 219 (1922), involved similar circumstances where a Roman Catholic Parish was divided by ecclesiastical decree and some of the former members were assigned to new parishes. That case arose prior to enactment of the Act of 1935, but the outcome was the same. The Court held that the former members lacked standing to bring the action due to their loss of church membership by virtue of ecclesiastical decree.

Thus, it is clear that Petitioners would have lacked standing to bring this action under Pennsylvania law both before and after enactment of the Act of 1935. Moreover, because Petitioners' lack of standing is due to the private actions of the Bishop, any claim that their due process rights have been violated must fall because the requisite state action is lacking.

2. Petitioners, likewise, are mistaken in claiming that they had "established property rights" prior to enactment of the Act of 1935. They erroneously cite *Krauczunas v. Hoban*, 221 Pa. 213, 70 A. 740 (1908) in support of this claim. It is clear, however, that Petitioners would not have had any "vested" property rights under Pennsylvania law prior to the Act of 1935 and that *Krauczunas* is not applicable.

The aggrieved parishioners, in *St. Casimir's*, had argued (as Petitioners do here) that they had vested rights in the church property which could not be taken

away. 273 Pa. at 499, 117 A. at 220-221. In rejecting this argument, the Pennsylvania Supreme Court stated:

> Appellants treat the question before us, as one of property rights in the church vested in them, but the difficulty this meets with is, that there can be no property rights in church property, save through membership in the congregation, and this essential cord of membership, to tie themselves to the church property, petitioners do not now possess.

Id. The Court then distinguished *Krauczunas*, stating:

> We know of no legislation which gives to a member of a congregation a property right in his membership therein. His rights in the church property flow from his membership. We are not in any way impairing the principle announced in *Krauczunas v. Hoban*, 221 Pa. 213, that church property belongs to the congregation of the church. The difficulty here is that appellants are no longer members of the congregation.

Id.

The Pennsylvania Supreme Court also examined the question of whether "the Act of 1935 because of its retrospective character take[s] property without due process of law, and divest[s] church lay members of vested property rights." *Canovaro*, 326 Pa. at 88. It held that the Act "does not constitute a divestment of a vested property right" and that it constitutionally "applie[s] with full force to all property acquired by religious societies either prior or subsequent to its enactment." *Id.* at 96. *See also, Post*, 326 Pa. at 103. Given that Petitioners had no vested property right at stake prior to enactment of the Act of 1935, that Act could not operate to impair any contractual

rights of Petitioners in violation of Article I, Section 10, Clause 1. *See, Fletcher v. Peck*, 6 Cranch 87 (1810) (impairment of contract right exists where right has vested).

3. Petitioners also claim that the Act of 1935 is unconstitutional because it gives a foreign sovereign (Vatican City) "the power to determine and change property law and legal standing in Pennsylvania" and "surrenders the State's law making authority to an absolute monarch, the ruler of Vatican City." Petition at 9.

Underlying each of Plaintiffs' claims in this regard is the mistaken notion that the Commonwealth has abdicated its authority to establish how property rights will be determined in Pennsylvania. In reality, the General Assembly, by virtue of the Act of 1935, has exercised its power to determine how property rights of churches will be determined and has decided that they will be determined according to church law.[4] Petitioners are simply dissatisfied with the manner in which the Commonwealth has chosen to exercise its authority.

4. Petitioners' final argument is that, in providing that church property is to be disposed of according to church law, the state has impermissibly incorporated the law of the Roman Catholic Church into the civil law in violation of the Establishment Clause of the First Amendment. Petition at 9.

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[4] This is not only a permissible choice of the Commonwealth, it is required by the Free Exercise Clause of the First Amendment which protects the right of churches to govern themselves according to their own laws.

As evidenced by numerous decisions of this Court, the Commonwealth's recognition of the right of religious societies to form associations and govern themselves according to their own laws does not violate the Establishment Clause of the First Amendment to the United States Constitution.[5] Rather, such accommodation is required by the Free Exercise Clause. Thus, the Act of 1935 is not unconstitutional on these grounds.

CONCLUSION

The state court correctly held that Petitioners lacked standing to bring this action and properly refused to address the federal constitutional questions raised by Petitioners. That court's decision is in complete conformity with the decisions of this Court and none of the considerations which would support a grant of review

[5] *See, e.g., Hobbie v. Unemployment Appeals Commission*, 480 U.S. 136, 145 (1987) ("This Court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause."); *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327, 337 (1987) ("A law is not unconstitutional simply because it *allows* churches to advance religion, which is their very purpose.")

are present in this case. Accordingly, Respondent, Bishop Wuerl, respectfully requests that the Petition for Certiorari be denied.

Respectfully submitted,

PHILIP J. MURREN
MAURA K. QUINLAN
BALL, SKELLY, MURREN & CONNELL
511 North Second Street
P. O. Box 1108
Harrisburg, PA 17108
(717) 232-8731

WILLIAM A. STEIDLE, JR.
Diocese of Pittsburgh
Legal Office
111 Boulevard of the Allies
Pittsburgh, PA 15222

Attorneys for Respondent

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